REMARKS

Claims 1-19 were pending in the application. The Examiner has finally rejected Claims 1-5 and 15-18 under 35 USC 103(a) as unpatentable over Hoefelmeyer in view of Kilpatrick; has rejected Claims 1, 6-8 and 15-18 as unpatentable over van der Made in view of Kilpatrick; has rejected Claims 9-11 under 35 USC 103(a) as being unpatentable over van der Made in view of Kilpatrick and further in view of Kolichtchak; has rejected Claim 12 as unpatentable over Hoefelmeyer in view of Kilpatrick and further in view of Kephart; and has rejected Claims 13, 14 and 19 as unpatentable over Hoefelmeyer in view of Kilpatrick, Kephart and Lamburt. For the reasons set forth below, Applicants believe that the claims, as amended, are patentable over the cited art.

The present invention provides a method, program storage device and apparatus for preventing attacks in data processing systems. The intrusion detection system comprises a host or application based sensor for detecting code based intrusions with a relatively low false-positive rate by monitoring system calls. Further, the present invention isolates the malicious code in the stack in order to extract it before the malicious code can do damage to

the system. The steps and means for isolating the malicious code and extracting it from the stack were previously recited in dependent claims 6-11, the language of which has been inserted by amendment to independent Claims 1, 15 and 16.

Malicious code strings related to a detected intrusion are identified, extracted and forwarded to a pattern filter located in the monitored data processing system to prevent further intrusions using said malicious code strings. The malicious code strings may be forwarded to a response server for assembling sets of similar malicious code strings for which signatures are generated to permit identification of all malicious code strings contained in a set. The generated signatures are then distributed to monitored and/or monitoring systems of a protected network to prevent further intrusions using the malicious code strings and variations thereof. The generated signatures of the present invention are not simply the malicious code strings, but are signatures generated for correlated sets of code strings and patterns, as set forth on page 7, lines 9-21. The steps and means for correlating the malicious code strings and generating a signature that can be sent to other entities to facilitate identification and isolation of malicious code were previously recited in Claims 12 and

19. By this amendment, independent Claims 12, 19 and 20 recite the method, apparatus and computer program element with the limitations of Claim 12.

The Hoefelmeyer system is directed to a parallel scanning system for detecting malicious code. In order to save time, Hoefelmeyer's front end processor feeds the incoming communications to multiple scanning computer systems (Col. 4, line 66-Col. 5, line 1), each of which is adapted to scan communications for one or more known malicious code signatures (Col. 2, lines 62-64). When any one of the multiple scanning computer systems recognizes a malicious code signature/string, it generates an alarm. Hoefelmeyer's system can only recognize known malicious code signatures by comparing incoming signatures/strings to stored lists of known malicious code signatures/strings. Hoefelmeyer cannot detect an intrusion without already knowing the malicious code string. As such, Hoefelmeyer cannot detect intrusions before the intrusions occur.

Hoefelmeyer's system does not monitor system calls to identify intrusions. Further, Hoefelmeyer does not teach or suggest identifying a malicious code string after having detected an intrusion by monitoring system calls. Rather, Hoefelmeyer simply recognizes a predetermined code string. Finally, Hoefelmeyer does not extract the malicious code

string and forward it to an intrusion limitation system. Rather, Hoefelmeyer's scanning computer system generates an alarm. Hoefelmeyer does teach that a detection management system is configured for creating a "signature" of a piece of malicious code and sending that to a remote detection location (140 of Fig. 1) when the remote location cannot afford to run multiple computer scanning systems. What Hoefelmeyer does is send the malicious code string with identification of the type of intrusion (e.g., Trojan, etc) for the remote site to use in its monitoring/pattern matching. Hoefelmeyer is not teaching or suggesting that a signature other than the detected malicious code signature be generated nor is Hoefelmeyer teaching or suggesting isolating and extracting the malicious code before it can execute, thereby preventing damage to the host system.

The Examiner has newly cited the Kilpatrick patent for its teaching of monitoring system calls to identify an intrusion. Applicants acknowledge that, in the cited passage from Column 2, lines 11-22, Kilpatrick teaches the monitoring of system calls. However, Kilpatrick does not teach or suggest isolating and extracting malicious code in a stack, as recited in independent Claims 1, 15 and 16. Further, Kilpatrick does not teach or suggest correlating to find sets of malicious code strings followed by

generating a signature that allows individual identification of all malicious code strings contained in the set, for use locally and for communication to other systems as set forth in independent Claims 12, 19 and 20. Accordingly, it cannot be maintained that Kilpatrick provides those teachings which are missing from the Hoefelmeyer patent.

For a determination of obviousness, the prior art must teach or suggest all of the claim limitations. "All words in a claim must be considered in judging the patentability of that claim against the prior art" (In re Wilson, 424 F. 2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). If the cited references fail to teach each and every one of the claim limitations, a *prima facie* case of obviousness has not been established by the Examiner. Since none of the cited references teaches the claimed steps and means for monitoring system calls to detect intrusions, followed by identifying the malicious code string related to a detected intrusion, isolating and extracting the malicious code string, or generating a signature for forwarding to local and remote intrusion limitation system, obviousness has not been established.

The van der Made patent is also directed to detecting malicious code. However, what van der Made provides is a virtual machine which simulates the functionality of the central processing unit and executes received code to determine if the received code is malicious. The virtual machine runs the code, generates a behavior pattern of the executed received code, and analyzes the behavior patterns to determine if they are characteristic of an intrusion. The van der Made method fully executes the code in a simulation environment, thereby protecting the CPU.

Applicants respectfully assert that van der Made does not detect intrusion by monitoring system calls to identify the intrusive code before it executes; rather, van der Made fully executes the intrusive code and identifies the code as malicious once it sees the full behavior pattern. Further, once van der Made detects a behavior pattern that is associated with malicious code, based on comparison to known behavior patterns of known malicious code, the virtual machine is shut down and its memory resources are released (Col. 9, lines 25-33). Accordingly, the code cannot execute in the actual computing system. van der Made does not teach or suggest extracting the malicious code string or generating a signature for forwarding to an intrusion limitation system.

The Examiner has again cited the Kilpatrick patent in conjunction with van der Made, noting that Kilpatrick monitors system calls. Applicants again note that neither the primary reference nor Kilpatrick teaches or suggests the claimed steps and means for monitoring system calls to detect intrusions, followed by identifying the malicious code string related to a detected intrusion, isolating and extracting the malicious code string, or generating a signature for forwarding to local and remote intrusion limitation system. Accordingly, since the references are devoid of teachings or suggestions of the claim features, obviousness has not been established.

With regard to the additional rejections based on a combination of teachings, Applicants note that all of the 103 obviousness rejections cite either van der Made of Hoefelmeyer as the primary reference. Applicants rely on the foregoing analysis of those patents and maintain that neither van der Made nor Hoefelmeyer teaches or suggests the features of the independent claims. Further, the additionally cited references do not teach those features which are missing from van der Made and Hoefelmeyer.

The Examiner has cited paragraph [0032] of Kolichtchak as teaching inspecting a stack as claimed in Claims 9-11. The cited paragraph, however, teaches the following:

> [0032] If the fault address is the execution address, the process is most likely malicious code, and the method 400 logs (440) and/or terminates the program creating that code. In some embodiments, only the logging step 440 is performed, and the method 400 returns (455) immediately after the logging step 440. In other embodiments, the attempted buffer overflow attack is both logged (440) and terminated. More specifically, the termination process may involve injecting (445) termination code in the current process and changing (450) the return address. In still other embodiments, the method 400 may skip the logging step 440 and simply terminate the process without logging. Optionally, the termination process may involve prompting a human operator whether to proceed with the termination.

Applicants respectfully assert that the cited passage from Kolichtchak does not teach inspecting a stack to retrieve an address leading to isolate and extract a malicious code string before the malicious code string can execute in the system. Rather, the passage teaches logging and terminating code, possibly with a change of return address. Such is not the same as or suggestive of inspecting a stack to retrieve the address, let alone of locating multiple locations on the stack and scanning from opposite directions to extract a malicious code string.

With respect to the citation of the Kephart patent, Applicants respectfully assert that the Kephart patent does not qualify as prior art against the present application. The pending rejections of Claims 12, 13, 14 and 19 use Hoefelmeyer in view of Kilpatrick and Kephart to deny patentability of the present invention under 35 USC 103, because of an assumption that Kephart would qualify as prior art under 35 USC 102. However, this assumption is incorrect. The Kephart patent is currently assigned to International Business Machines Corporation (IBM) and the subject matter of Kephart was owned by IBM and subject to an obligation of assignment to IBM at the time that the present invention was made. In addition, at the same time, the present invention was owned by IBM and subject to an obligation of assignment to IBM. Hence, the present invention and the subject matter of Kephart were owned by a common assignee (i.e., IBM) at the time that the present invention was made.

Claims 13, 14 and 19 are rejected as unpatentable over Hoefelmeyer in view of Kilpatrick and Kephart and further in view of the Lamburt patent. The Lamburt patent is cited for its teachings regarding the use of edit distance algorithms. Applicants respectfully assert that the addition of edit distance algorithms to Hoefelmeyer

modified with Kilpatrick (with the Kephart patent teachings being unavailable as prior art against the pending claims) would not result in the invention as claimed. As detailed above, the combination of Hoefelmeyer and Kilpatrick does not teach monitoring system calls to detect intrusions, followed by identifying the malicious code string related to a detected intrusion, extracting the malicious code string, or generating a signature for forwarding to a local or remote intrusion limitation system.

Moreover, one having skill in the art would not be motivated to modify any Hoefelmeyer/Kilpatrick patent system with Lamburt's edit distance teachings, since Hoefelmeyer is not identifying and comparing multiple code strings. Each of Hoefelmeyer's scanning systems simply recognizes a string and generates an alarm. There are no teachings or suggestions that multiple strings be recognized and their similarities considered.

As noted above, the prior art must teach or suggest all of the claim limitations and "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art" (In re Wilson, 424 F. 2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Applicants further note that a prima facie case of obviousness is only established when the teachings of the prior art itself

suggest the claimed subject matter to a person of ordinary skill in the art. In re Bell, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). A proper prima facie case of obviousness cannot be established by combining the teachings of the prior art absent some teaching, incentive, or suggestion supporting the combination. In re Napier, 55 F.3d 610, 613, 34 U.S.P.Q.2d 1782, 1784 (Fed. Cir. 1995); In re Bond, 910 F.2d 831, 834, 15 U.S.P.Q.2d 1566, 1568 (Fed. Cir. 1990). The cited references do not teach the claim features and do not teach or suggest combination or modification of their respective teachings in such a way as to arrive at the invention as claimed. Since none of the cited references teaches the claimed steps and means for monitoring system calls to detect intrusions, followed by identifying the malicious code string related to a detected intrusion, extracting the malicious code string and forwarding the malicious code string to an intrusion limitation system, obviousness has not been established.

Moreover, Applicants respectfully reiterate that the Hoefelmeyer/Kilpatrick combination does not teach or suggest the claimed features, that the Kolichtchak patent publication does not contain the teachings for which it is cited; that the Kephart patent is not available as a prior

art reference; and, that one having skill in the art would not look to the Lamburt patent teachings to modify Hoefelmeyer/Kilpatrick. Clearly, *prima facie* obviousness has not been established.

Based on the foregoing amendments and remarks, Applicants respectfully request entry of the amendments, reconsideration of the rejections, and issuance of the claims.

Respectfully submitted,

Swimmer, et al

By: */Anne Vachon Dougherty/*
Anne Vachon Dougherty
Reg. No. 30,374
Tel. (914) 962-5910